

UNITED STATES BANKRUPTCY COURT

DISTRICT OF HAWAII

In re

OKITA KUNIMITSU &
ASSOCIATES, INC.,

Debtor.

Case No. 00-04318
Chapter 7

Re: Docket No. 61, 83

**MEMORANDUM DECISION REGARDING ALLOWANCE OF
ACCOUNTANT'S FEES FOR PREPARING TAX RETURNS**

The trustee in this chapter 7 case retained Sterling & Tucker, Inc. (with the court's approval) as accountants. The accountants prepared corporate income tax and general excise tax returns for the trustee for 1999, 2000, and 2001. The trustee has filed her final report and accounting and the accountants have filed an application for final compensation in the amount of \$6,595.27.

The Office of the United States Trustee ("OUST") objected to a portion of the time charged by the accountants. The disputed amounts in this case are relatively small (about 5.3 hours out of a total of 58.8 hours), but OUST points out that the same issues arise in many chapter 7 cases.

The parties presented argument at a hearing on January 19, 2005,¹ and

¹The accountants filed their application on October 2, 2003 and OUST filed its objection on October 24, 2003. The hearing on the application was presumably delayed so that it would coincide with the hearing on the trustee's final report. That hearing could not take place until certain disputed claims were resolved.

filed post-hearing materials as directed.

OUST objects to the request for compensation for approximately 3.3 hours spent in preparing the corporate income tax return for fiscal year 2001. OUST points out that the estate's gross taxable income for that year was \$344.61. Relying on Rev. Rul. 84-123, OUST claims that the trustee could have received a waiver of the requirement to file that tax return. Rev. Rul. 84-123 only applies, however, if the corporate debtor "has neither income nor assets." There is no authority which permits the Internal Revenue Service to waive the return filing requirement if the corporate debtor or its bankruptcy estate has any assets or any income, however small. Moreover, trustees must also file state income tax returns, and it is unknown whether the state tax authority would follow Rev. Rul. 84-123.

It is unfortunate that trustees must file returns even where the cost of preparing the return is disproportionate to, and in some cases greater than, the estate's taxable income. Trustees, however, must file federal tax returns, 26 U.S.C. § 6012(b)(3), and must comply with state law, 29 U.S.C. § 959(b), and no law excuses the trustee from the obligation to file tax returns in the circumstances of this case. Of course, trustees and their accountants in such cases must take reasonable steps to minimize the expense of preparing the required returns, but OUST does not contend in this case that the accountants spent too much time to

prepare the return. Therefore, I will overrule this objection.

Second, OUST objects to the charges for approximately two hours spent in preparing general excise tax returns. OUST states that trustees should prepare “routine” general excise tax returns themselves. I will sustain this objection. The general excise tax is a privilege tax imposed on gross business receipts. Haw. Rev. Stat. §§ 237-13, -3. Computation of the tax in most cases requires the taxpayer simply to add up the taxpayer’s receipts and multiply them by the appropriate tax rates. Relatively few businesses and types of income are excluded from the tax, and a single rate applies to virtually all taxpayers. Haw. Rev. Stat. § 237-13. The returns are equally simple. In a few cases, it may be appropriate for trustees to have an accountant prepare the general excise tax returns. For example, if the debtor is in a business which receives both taxable and nontaxable income, the trustee may reasonably need an accountant’s help. This case did not present any such unusual circumstances, however. Therefore, I will disallow \$193.22² of the total amount requested.

Sterling & Tucker is directed to submit a proposed order allowing

²OUST estimates that the accountants spent approximately two hours on the general excise tax returns. My review of the timesheets reveals a lower figure. The amount disallowed consists of \$37.50 charged by Laurie Young-Kagamida on June 25, 2001, \$58.00 charged by Ms. Young-Kagamida on November 21, 2002, \$50.00 (a portion of the day’s total) charged by Loretta R. Miller on June 14, 2001, and \$40.00 charged by Will Fong on December 2, 2002, plus general excise tax at 4.16%.

final compensation to the firm in the amount of \$6,402.05. The trustee is directed to submit an amended final report adjusting the distribution to creditors to reflect this change.

DATED: Honolulu, Hawaii, February 1, 2005.



/s/ Robert J. Faris
United States Bankruptcy Judge